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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 617

DOROTHY HORVATH,

Petitioner,

vs.

CITY OF MILWAUKEE,
a municipal corporation,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

JOHN J. FLEMING, City Attorney

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HAMMERSMITH-KORTMEYER CO. MILWAUKEE

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STATEMENT OF FACTS

The facts set forth in the Statement submitted by the petitioner are basically correct, but we wish to make certain comments with respect thereto, in order that the record be clarified.

In the third paragraph under "STATEMENT" on page 2 of the petition, petitioner alleges that "the city

attorney" stated that the posting of a bond would result in loss of appeal rights and the bond itself. Nowhere does this appear in the record, nor is it a correct statement of Wisconsin law.

The petitioner was not compelled to perform labor of any kind.

ARGUMENT

The federal question presented herein involves the definition of the term "involuntary servitude." While quoting a definition of servitude from *Hodges v. U.S.*, 203 U.S. 1, 27 Sup. Ct. 6, 51 L. Ed. 65, petitioner overlooks the direct statement of the opinion which declares, in interpreting the 13th Amendment, that:

> "The meaning of this is as clear as language can make it. The things denounced are slavery and involuntary servitude, and Congress is given power to enforce that denunciation. *All understand by these terms a condition of enforced compulsory service of one to another.* * * *" (Emphasis supplied) *Hodges v. U. S., supra,* at page 16.

U. S. v. Gaskin, 320 U. S. 527, 64 Sup. Ct. 318, 88 L. Ed. 287, relied upon by the petitioner for the proposition that involuntary servitude does not necessarily involve the performance of labor, ignores the factual situation in that case that imprisonment was directed toward reducing the prisoner to a condition of peonage.

CONCLUSION

Neither Section 101-321, Milwaukee Code of Ordinances, nor Section 66.12 (1) (c), Wisconsin Statutes, 1963 (see Appendix) result in the imposition of involuntary servitude as defined by this Honorable Court. Ac-

cordingly, it is respectfully requested that the petition for a writ of certiorari to the Supreme Court of Wisconsin be denied.

Respectfully submitted,

JOHN J. FLEMING, City Attorney

PATRICK J. MADDEN, Assistant City Attorney.

Attorneys for Respondent.

APPENDIX

Section 101-321, Milwaukee Code of Ordinances

101-321. *Penalties.*

(a) Any person who shall violate any of the sections of Chapter 101, as set forth in Column 1 below, shall, upon the first conviction thereof, forfeit not more than the amount set forth in Column 2 opposite the section listed in Column 1, together with the costs of prosecution.

For the second conviction, within the number of years set forth in Column 4 opposite the section listed in Column 1, the forfeiture shall be not more than the amount set forth in Column 3, together with the costs of prosecution.

In default of payment of any forfeiture and costs of prosecution, the violator shall be imprisoned in the house of correction or the county jail until said forfeiture and costs are paid, but such imprisonment shall not exceed 90 days.

* * *

Section 66.12(1)(c), Wisconsin Statutes, 1963

(c) In case of conviction the court shall enter judgment against the defendant for the costs of prosecution, and for the penalty or forfeiture, if any, and that he be imprisoned for such time, not exceeding 90 days, unless otherwise provided by the ordinance, resolution or bylaw, as the court deems fit unless the judgment is sooner paid. Such judgment or the imposition of any penalty or costs may be suspended or deferred for not more than 30 days in the discretion of the court. Prisoners confined in the county jail or in some other penal or correctional institution for violation of a city or village ordinance, resolution or bylaw shall be kept at the expense of the city or village.